FILED
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No. 93-369

In the Supreme Court of the United States

OCTOBER TERM, 1993

FRED WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

WILLIAM KANTER
ROBERT D. KAMENSHINE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

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QUESTION PRESENTED

Whether petitioner was liable to the United States for liquidated damages under 42 U.S.C. 254*o*(b)(1)(A) because he breached his obligation under the National Health Service Corps Scholarship Program to provide primary health care services in an underserved area of the country for three years in exchange for the government's payment of his medical school tuition and expenses for three years.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	10
Conclusion	18

TABLE OF AUTHORITIES

Cases:

Estate of Cowart v. *Nicklos Drilling Co.*, 112 S. Ct. 2589 (1992)	13
Morrison-Knudsen Constr. Co. v. *Director, Office of Workers' Compensation Programs*, 461 U.S. 624 (1983)	13
Rendleman v. *Bowen*, 860 F.2d 1537 (9th Cir. 1988)	10, 15
United States v. *Bills*, 822 F.2d 373 (3d Cir. 1987)	2, 17
United States v. *Citrin*, 972 F.2d 1044 (9th Cir. 1992)	2
United States v. *Swanson*, 618 F. Supp. 1231 (E.D. Mich. 1985)	12

Statutes and regulations:

Public Health Service Act, 42 U.S.C. 201 *et seq.*:	
42 U.S.C. 254*l*-254*o* (1988 & Supp. III 1991)	1
42 U.S.C. 254*l*	13
42 U.S.C. 254*l*(a) (Supp. III 1991)	2
42 U.S.C. 254*l*(b)(1)	2
42 U.S.C. 254*l*(b)(2)	2
42 U.S.C. 254*l*(b)(4) (Supp. III 1991)	2
42 U.S.C. 254*l*(f)(1)(A)	3
42 U.S.C. 254*l*(f)(1)(B)(iv) (1988 & Supp. III 1991)	3, 10, 13, 16
42 U.S.C. 254*l*(g)(1)	2, 13
42 U.S.C. 254m	15, 16
42 U.S.C. 254m(a)	3

Statutes and regulations—Continued: Page

42 U.S.C. 254m(b)(5)(A)(i) 3
42 U.S.C. 254m(c) 3
42 U.S.C. 254m(c)(1) 16
42 U.S.C. 254m(e) 3
42 U.S.C. 254o 3-4, 13
42 U.S.C. 254o note 7
42 U.S.C. 254o(a) 4
42 U.S.C. 254o(a)(1) 16, 17
42 U.S.C. 254o(a)(1)(A)-(C) 14
42 U.S.C. 254o(a)(1)(D) 8, 11, 12, 13, 14
42 U.S.C. 254o(b) 4
42 U.S.C. 254o(b)(1) 6, 7, 15, 16, 17
42 U.S.C. 254o(b)(1)(A) 10, 11, 12
42 U.S.C. 254o(b)(1)(B)(ii) 6
42 U.S.C. 254o(d)(2) 5, 15, 16, 17
Public Health Service Amendments of 1987, Pub. L. No. 100-177, § 204, 101 Stat. 1000-1003 7
42 C.F.R.:
Section 62.1 2
Section 62.6(e) 3
Section 62.9(b) 14
Section 62.12 5

Miscellaneous:

S. Rep. No. 887, 94th Cong., 2d Sess. (1976) 10, 15

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 994 F.2d 646. The order of the district court (Pet. App. 1d-2d) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 19, 1993. Pet. App. 1c. The petition for a writ of certiorari was filed on August 16, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Congress established the National Health Service Corps (NHSC) Scholarship Program, 42 U.S.C. 254*l*-254*o* (1988 & Supp. III 1991), to provide health

care in areas of the country that are underserved. See 42 U.S.C. 254*l*(a), (b)(4) (Supp. III 1991); 42 C.F.R. 62.1; see also, *e.g.*, *United States* v. *Citrin*, 972 F.2d 1044, 1046 (9th Cir. 1992); *United States* v. *Bills*, 822 F.2d 373, 376 (3d Cir. 1987).[1] To participate in the Scholarship Program, an individual must be enrolled in an accredited health care education program, such as a medical school, and be eligible for, or hold, an appointment as an officer in the Corps or be eligible for selection for civilian service in the Corps. 42 U.S.C. 254*l*(b)(1) and (2). In addition, the participant must sign "a written contract" with the Secretary of Health and Human Services (HHS) under which the participant agrees "to accept payment of a scholarship and to serve * * * for the applicable period of obligated service in a health professional shortage area." 42 U.S.C. 254*l*(b)(4) (Supp. III 1991).

A scholarship payment "under a written contract under the Scholarship Program" is "provided to a student for a school year." 42 U.S.C. 254*l*(g)(1). The scholarship covers (1) "the tuition of the student in such school year"; (2) "all other reasonable educational expenses * * * incurred by the student in such school year"; and (3) "payment to the student of a stipend * * * for each of the 12 consecutive months beginning with the first month of such school year." *Ibid.* Scholarships may be awarded "in each such school year or years for a period of years * * * determined by the individual, during which period the individual is pursuing a[n] [approved] course of

[1] Although Congress has amended the statute creating the NHSC Scholarship Program since the events that gave rise to this case, none of the amendments materially affects the provisions relevant here. We cite herein to the current statute.

study," for up to four years. 42 U.S.C. 254*l*(f)(1)(A). After a participant has received a scholarship for a given school year, he or she will receive "continuation scholarship[s]" for subsequent years if (1) he or she requests a continuation, (2) the continuation award would not extend the total period of scholarship support beyond four years, and (3) he or she remains eligible for the scholarship. 42 C.F.R. 62.6(e).

A recipient of scholarship payments agrees, in return for the payments, "to serve for a time period * * * equal to * * * (I) one year for each school year for which the individual was provided a scholarship under the Scholarship Program, or (II) two years, whichever is greater, as a provider of primary health services in a health professional shortage area * * * to which he is assigned by the Secretary as a member of the [National Health Service] Corps." 42 U.S.C. 254*l*(f)(1)(B)(iv) (1988 & Supp. III 1991). During the "period of obligated service" (*ibid.*), the scholarship recipient generally must engage in "the full-time clinical practice of such individual's profession." 42 U.S.C. 245m(a); but cf. 42 U.S.C. 245m(e) (service under a National Research Service Award counts against period of obligated service). The period of obligated service generally begins on the date when the scholarship recipient is appointed to the Corps. 42 U.S.C. 245m(c). That date generally follows the recipient's completion of his or her education program; a scholarship recipient may, however, obtain a deferment of the period of obligated service in order to complete "an internship, residency, or other advanced clinical training." 42 U.S.C. 254m(b)(5)(A)(i).

The consequences of a scholarship recipient's breach of a scholarship contract are set forth in

42 U.S.C. 254*o*, entitled "Breach of a scholarship contract or loan repayment contract." Section 254*o*(a) provides in relevant part:

> **(a) Failure to maintain academic standing; dismissal from institution; voluntary termination; liability; failure to accept payment**
>
> (1) An individual who has entered into a written contract with the Secretary under section 254*l* of this title and who—
>
> (A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled * * *,
>
> (B) is dismissed from such educational institution for disciplinary reasons,
>
> (C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training, or
>
> (D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,
>
> in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

Section 254*o*(b) then provides in pertinent part as follows:

(b) Failure to commence or complete service obligations; formula to determine liability; payment to United States; recovery of delinquent damages; disclosure to credit reporting companies

(1)(A) * * * [I]f an individual breaches his written contract by failing (for any reason not specified in subsection (a) of this section * * *) either to begin such individual's service obligation under section 254*l* of this title * * * or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with [a formula providing for treble the amount of scholarship payments, plus interest].

Section 254*o*(d)(2) constitutes an exception to this provision. It provides for a waiver of the service obligation and of the liquidated-damages liability for a breach of that obligation if "compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable." 42 U.S.C. 254*o*(d)(2); see also 42 C.F.R. 62.12.

2. Petitioner applied for and received scholarships under the NHSC Scholarship Program in each of his first three years at Baylor College of Medicine in Houston, Texas. In May 1979, he signed a contract for the 1979-1980 school year. He subsequently requested and received continuation scholarships for the school years 1980-1981 and 1981-1982. During the three-year period, he received scholarship payments totalling $22,182: $7283 for the first year, $6642 for

the second year, and $8257 for the third year. Pet. App. 5a-6a.

Petitioner did not request a continuation scholarship for his fourth year of medical school. Accordingly, he received no scholarship funds for that year. Pet. App. 6a.

Before petitioner graduated, HHS sent him a Deferment Information Bulletin, which explained that he could request deferment of his service obligation in order to complete a residency program. The bulletin explained that he had to request a deferment by June 30, 1983. After petitioner failed to respond to the bulletin, HHS sent him another notice advising him to respond immediately to avoid missing the June deadline. Again, petitioner failed to respond. As a result of petitioner's failure to seek a deferment of his service obligation, HHS advised petitioner that he would be in default of his scholarship contract as of September 30, 1983. Thereafter, HHS advised petitioner in a letter dated November 14, 1983, that because of his default, he was liable for liquidated damages under 42 U.S.C. 254*o*(b)(1). The letter instructed him to pay by September 30, 1984. Pet. App. 6a-7a.

Petitioner later moved to California without notifying HHS of his change of address. There, he began a residency program in neurosurgery (a specialty not approved under the Scholarship Program), which he completed in Arizona. During his residency, he repaid $6770 to HHS through a collection agency. Pet. App. 7a; see also 42 U.S.C. 254*o*(b)(1)(B)(ii) (authorizing use of collection agencies to recover delinquent debts).

In 1987, petitioner offered to fulfill his service obligation under the then-recently enacted Special Repayment Program (SRP), see Public Health Service Amendments of 1987, Pub. L. No. 100-177, § 204, 101 Stat. 1000-1003; 42 U.S.C. 254*o* note. The SRP was created to allow scholarship recipients who had breached their contracts, such as petitioner, to discharge their obligation by serving for a period in a "Health Manpower Shortage Area." Ultimately, however, HHS was unable to find an area in need of neurosurgery, as it is a specialty that is not approved under the program. Accordingly, in 1989 HHS notified petitioner that he was obligated to pay the balance of his debt. After petitioner failed to respond, HHS referred the matter to the Department of Justice. Pet. App. 7a-8a.

3. The United States commenced this action against petitioner in the United States District Court for the District of Arizona to recover liquidated damages pursuant to 42 U.S.C. 254*o*(b)(1) for his breach of his scholarship contract. The district court entered summary judgment in favor of the United States for $166,255.68, reflecting treble the amount of scholarship payments that had been made to petitioner, less the $6770 that petitioner had already repaid through a collection agency, plus interest and costs. Pet. App. 1d-2d. The court rejected petitioner's argument that he was not subject to liquidated damages under Section 254*o*(b)(1) because he had not requested a continuation scholarship for his fourth year of medical school. Pet. App. 1d-2d.

4. The United States Court of Appeals for the Ninth Circuit affirmed. Pet. App. 1a-17a. It framed the issue before it as "which damages provision

applies to [petitioner]: (1) 42 U.S.C. §254*o*(b)(1)(A), providing for a payment of treble damages * * *; or (2) 42 U.S.C. § 254*o*(a)(1), providing for payment of damages equal to the amount which has been paid to the scholarship recipient." *Id.* at 9a. The court observed that "the treble damages provision [in Section 254*o*(b)(1)] applies only when scholarship recipients breach their written contract by means other than those detailed in subsection (a)'s purview." *Id.* at 11a. The court rejected petitioner's argument that he had breached his contract by the means prescribed in subsection (a)(1)(D) because he had "fail[ed] to accept payment * * * of a scholarship under such contract." See *id.* at 11a-12a. The court determined that petitioner "misconstrues the meaning of the term 'scholarship' as it is used in section 254 generally, and section 254*o*(a)(1)(D) in particular." *Id.* at 12a. The court explained that petitioner erred in "assum[ing] [that] his 'scholarship' includes four years of entitlement." *Ibid.* To the contrary, the court stated:

> Section 254*l* refers to a "scholarship" as a single, one-year unit corresponding to a given school year. * * * Section 254*o* also uses the term "scholarship," and specifically refers to section 254*l*. We therefore see no reason to attribute two different meanings to the same term.

Id. at 13a (citation omitted).

Thus, the court construed subsection (a)(1)(D) "to treat each year that a recipient receives scholarship funds as separate and independent." Pet. App. 13a. Under that construction, the court held, "[s]ubsection (a)(1)(D) applies only in situations where a scholarship recipient signs a written contract for a given year, and then later, during the course of that

year, fails to accept payment or directs his or her school not to accept payment, in whole or in part, for *that given year*." *Ibid.* In that situation, the court continued, "the individual does not incur a service obligation for that specific year, but instead must repay the government only those funds that had in fact been paid to him or her, or on his or her behalf, under the contract." *Id.* at 13a-14a. But the individual's decision not to accept funds for that year would not, the court emphasized, "in any way affect[] [the recipient's] previously incurred obligation to serve in the NHSC for the * * * years for which [the individual] did receive full funding." *Id.* at 14a n.2. Accordingly, the court concluded that petitioner "could not evade his previously incurred service obligations by electing not to accept additional scholarship funds for a fourth year." *Id.* at 14a.

The court explained that its conclusion was consistent with the purpose of the Scholarship Program. It observed that "Congress intended that, except in unusual cases, those who receive scholarship funds either complete their service obligations or pay substantial penalties." Pet. App. 15a.[2] The interpretation

[2] This part of the court of appeals' opinion is not accurately reproduced in the petitioner's appendix (Pet. App. 15a). The relevant passage, as officially reported, states (994 F.2d at 650):

> Congress intended that, except in unusual cases, those who receive scholarship funds either complete their service obligations or pay substantial penalties. As the D.C. Circuit has noted, "[w]hen Congress created the scholarship program in 1972, it recognized that exceptions to the damages provision might sometimes be appropriate," but the exceptions are narrow. *Buongiorno* v. *Sullivan*, 912 F.2d 504, 506 (D.C. Cir. 1990) (referring to 42 U.S.C. § 254*o*(d)(2), which provides for partial or total waiver of a service

urged by petitioner, the court determined, "would, in effect, grant scholarship participants the option to transform their scholarships into ordinary student loans in their final year of medical school." *Id.* at 14a-15a. Such a result, the court concluded, would undermine the purpose of the Scholarship Program, which "is not intended 'as a mechanism solely to subsidize health professional education,' but 'as a means to overcome a geographic maldistribution of health professionals.'" *Id.* at 15a (quoting *Rendleman* v. *Bowen*, 860 F.2d 1537, 1541 (9th Cir. 1988), quoting in turn S. Rep. No. 887, 94th Cong., 2d Sess. 201 (1976)).

ARGUMENT

Petitioner contends (Pet. 15) that both the provision requiring recipients of scholarship payments under the NHSC Scholarship Program to provide a period of obligated service, 42 U.S.C. 254*l*(f)(1)(B)(iv) (1988 & Supp. III 1991), and the provision prescribing liquidated damages for breaches of that obligation, 42 U.S.C. 254o(b)(1)(A), apply only when a participant in the program receives scholarship payments for every year of his or her education program. In petitioner's view, if a participant receives scholarship payments for fewer than all years of the program, he or she does not have a service obligation and is not liable for liquidated damages for any failure to perform the service obligation; instead, such an individual need only repay the scholarship payments received. The court of appeals correctly rejected that argument,

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obligation or damages payment in limited circumstances due to impossibility, undue hardship, or unconscionability[.]

holding that it cannot be squared with the language or purposes of the statute. That holding, moreover, concerns an issue of first impression, as petitioner recognizes (Pet. 27), and thus does not conflict with any decision of this Court or that of any other court of appeals. Further review is therefore unwarranted.

1. Here, as in the court of appeals, petitioner places primary reliance on 42 U.S.C. 254*o*(a)(1)(D). Pet. 16-17. Petitioner's reliance on that provision is misplaced.

Section 254*o*(a)(1)(D) provides:

> An individual who has entered into a written contract with the Secretary under section 254*l* of this title and who —
>
> * * * * *
>
> (D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,
>
> in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

Petitioner contends that his breach is covered by this Section, rather than Section 254*o*(b)(1)(A), which prescribes liquidated damages "if an individual breaches his written contract by failing (for any reason not specified in subsection (a) of this section * * *) either to begin such individual's service obligation under

section 245*l* * * * or to complete such service obligation." Petitioner's contention is incorrect.[3]

First, petitioner's decision not to sign a continuation scholarship contract for the fourth year of medical school was not a "fail[ure] to accept payment * * * of a scholarship under such contract" within the meaning of Section 254*o*(a)(1)(D). Section 254*o*(a)(1)(D) applies only to failures to accept scholarship payments that constitute a breach of a scholarship contract. Petitioner's decision not to extend his scholarship into his fourth year of medical school was not a breach of any scholarship contract. He simply decided not to sign a scholarship continuation contract for that year. He had no duty to extend his scholarship by requesting a contract for his fourth year, he did not request such a fourth-year contract, and his non-receipt of a scholarship in his fourth year was therefore not a "fail[ure] to accept payment * * * of a scholarship" for purposes of Section 254*o*(a)(1)(D).

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[3] Although both petitioner (see, *e.g.*, Pet. 7, 15) and the court of appeals use the term "treble damages" to refer to the amount of damages recoverable under Section 254*o*(b)(1)(A), that term is not accurate. Section 254*o*(b)(1)(A) authorizes the recovery of treble the amount of scholarship payments made to a recipient, plus interest. The damages caused by a breach of a scholarship contract, though not precisely quantifiable, plainly exceed the amount of scholarship payments. As one court explained, "Who is to measure the reasonable value of a doctor's services for three years in an underserved area? Certainly it is far greater than the precise amount of the money expended by the federal government in financing the doctor's education." *United States* v. *Swanson*, 618 F. Supp. 1231, 1242 (E.D. Mich. 1985). Accordingly, the term "liquidated damages" is more accurate.

Petitioner's contrary argument rests on the erroneous view that the term "scholarship" in Section 254*o*(a)(1)(D) refers to a four-year entitlement. See Pet. App. 12a. As the court of appeals correctly explained, the term "scholarship" instead refers to a payment for a *single* school year. That is clear from Section 254*l*(g)(1), which states that a "scholarship" is "provided to a student for a school year" and covers (1) "the tuition of the student in such school year"; (2) "all other reasonable educational expenses * * * incurred by the student in such school year"; and (3) "payment to the student of a stipend * * * for each of the 12 consecutive months beginning with the first month of such school year." 42 U.S.C. 254*l*(g)(1). In addition, Section 254*l*(f)(1)(B)(iv) provides that the scholarship contract must contain an agreement by the recipient "to serve for a time period * * * equal to * * * (I) one year for each school year for which the individual was provided a scholarship under the Scholarship Program," or two years, whichever is greater. 42 U.S.C. 254*l*(f)(1)(B)(iv) (1988 & Supp. III 1991).

Thus, the term "scholarship," as used in Section 254*l*, plainly means the payment provided for a single school year. The court of appeals correctly concluded that the term should have the same meaning for purposes of Section 254*o*. Pet. App. 13a; see, *e.g.*, *Estate of Cowart* v. *Nicklos Drilling Co.*, 112 S. Ct. 2589, 2596 (1992); *Morrison-Knudsen Constr. Co.* v. *Director, Office of Workers' Compensation Programs*, 461 U.S. 624, 633 (1983).

The court of appeals' interpretation of the term "scholarship" makes sense of Section 254*o*(a)(1)(D). Under that interpretation, Section 254*o*(a)(1)(D)

means that when an individual breaches a scholarship contract for a particular school year by declining to accept some or all of the scholarship payment for that year, the individual's liability for that year is limited to any scholarship amounts paid in that year. So read, Section 254o(a)(1)(D) relieves an individual of a service obligation with respect to a school year in which he declines a scholarship in whole or in part. It does not, however, affect any service obligation that arises from the individual's receipt of scholarship payments in prior school years.[4]

Petitioner's interpretation of Section 254o(a)(1)(D), in contrast, leads to wholly illogical results. Under his interpretation, scholarship recipients could routinely avoid service obligations and liquidated damages. All they would have to do is pay for the final part of their education program themselves. For example, a medical school student presumably could, after having the government pay his or her medical school expenses for three years and 11 months, wipe

[4] HHS advises us that its policy is not to seek liquidated damages from scholarship recipients who breach their scholarship contracts in one of the ways specified in Section 254o(a)(1)(A) through (a)(1)(C)—for example, by failing to complete their medical school studies. Although the statute could be read to allow recovery of liquidated damages from individuals who commit such breaches, liquidated damages are not sought because such individuals are not qualified (because of their failure to complete their medical education) to avoid liquidated damages by performing their service obligations. In contrast to those individuals, individuals who do complete their education program, such as petitioner, would be able to avoid liquidated damages by performing their service obligation, except for their voluntary decision not to obtain a deferment in order to complete an approved residency program. See 42 C.F.R. 62.9(b).

out his or her three-year service obligation by declining to accept the last month's stipend. Scholarship recipients who breached their scholarship contracts in this manner would thus be better off than scholarship recipients who lived up to their contract obligations.

Petitioner's interpretation would also frustrate the purpose of the NHSC Scholarship Program. As the court of appeals recognized, the scholarship program "is not intended 'as a mechanism solely to subsidize health professional education,' but 'as a means to overcome a geographic maldistribution of health professionals.'" Pet. App. 15a (quoting *Rendleman* v. *Bowen*, 860 F.2d 1537, 1541 (9th Cir. 1988), quoting in turn S. Rep. No. 887, 94th Cong., 2d Sess. 201 (1976)). To that end, the statute generally requires that scholarship recipients either provide health care services in an underserved area or pay substantial penalties for failing to do so. The statute allows for exceptions to that requirement only when compliance "is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable." 42 U.S.C. 254*o*(d)(2). Petitioner's interpretation, however, transforms the service obligation into a service option, avoidable by the expediency of declining any part of a scholarship payment, however small.

2. Petitioner also relies (Pet. 22-25) on Section 254m to support his argument that the liquidated-damages provision in Section 254*o*(b)(1) does not apply to him. Section 254m, however, does not support this position.

Under Section 254m, the period of obligated service generally begins only after a scholarship recipient has been appointed to the National Health Service Corps. 42 U.S.C. 254m(c)(1) ("An individual shall be considered to have begun serving a period of obligated service * * * (1) on the date such individual is appointed as an officer in a Regular or Reserve Corps of the Service or is designated as a member of the Corps."). Petitioner argues (Pet. 24-25) that because Section 254*o*(b)(1) applies to breaches that occur as a result of an individual's failure to begin or complete a period of obligated service, it applies only to breaches that occur after the individual's appointment to the Corps. That argument is without merit.

Petitioner's argument rests on the erroneous assumption that the duty to perform a period of obligated service does not arise until after appointment to the Corps. To the contrary, a scholarship recipient's service obligation arises when he or she enters into a scholarship contract with the Secretary. See 42 U.S.C. 254*l*(f)(1)(B)(iv) (1988 & Supp. III 1991). Thus, it is possible for a scholarship recipient to breach his or her duty to perform obligated service without being appointed to the Corps. And unless that breach occurs for one of the reasons set forth in Section 254*o*(a)(1), or comes within the waiver provision of Section 254*o*(d)(2), it gives rise to liability for liquidated damages under Section 254*o*(b)(1).

Petitioner was liable for liquidated damages, notwithstanding his failure to renew his scholarship contract for the fourth year of medical school. He breached his duty to perform obligated service by failing to obtain a deferment of that obligation pending the completion of his residency. See Pet.

App. 17a. It was because of his failure to obtain a deferment pending completion of an approved residency program—and not because of his failure to accept scholarship money in the fourth year of school —that he was not appointed to the Corps. Thus, petitioner failed to begin his period of obligated service for a reason other than one set forth in Section 254*o*(a)(1) and was not entitled to a waiver under Section 254*o*(d)(2). That breach exposed him to liquidated damages under Section 254*o*(b)(1).

In another case involving a scholarship recipient who breached his contract by failing to obtain a deferment, the Third Circuit held that the government could recover liquidated damages under Section 254*o*(b)(1). *United States* v. *Bills*, 822 F.2d 373, 377-378 (1987). The Third Circuit in *Bills* rejected the scholarship recipient's argument that the liquidated-damages provision applies only to breaches that occur after a scholarship recipient has been appointed to the National Health Service Corps. *Ibid.* The court of appeals in this case correctly rejected the identical argument advanced by petitioner, which is based solely on the dissenting opinion in *Bills*. Pet. App. 16a-17a; Pet. 24 (citing *Bills*, 822 F.2d at 380 (Becker, J., dissenting in part and concurring in part)).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

WILLIAM KANTER
ROBERT D. KAMENSHINE
Attorneys

NOVEMBER 1993